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Attorneys for Plaintiff, JOSUE SOTO, Individually, On Behalf of All Others Similarly Situated,
and on Behalf of the General Public

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSUE SOTO, Individually, On Behalf of All)	CIVIL NO. 08cv0033 L (AJB)
Others Similarly Situated, and on Behalf of the)	
General Public,)	
)	<u>CLASS ACTION</u>
Plaintiff,)	
)	<u>EX PARTE APPLICATION TO ALLOW</u>
v.)	FILING OF PLAINTIFF'S FIRST
)	AMENDED COMPLAINT WITHOUT
DIAKON LOGISTICS (DELAWARE), INC., a)	LEAVE OF COURT
foreign corp.; and DOES 1 through 50,)	
inclusive,)	
)	
Defendants.)	
)	

1 Plaintiff JOSUE SOTO ("Plaintiff") hereby moves the Court to direct the Clerk of the
2 Court to file Plaintiff's First Amended Complaint without leave of court. Plaintiff's request is
3 based upon this ex parte application, the accompanying declaration of Plaintiff's counsel, David A.
4 Huch, and Exhibit "A" attached thereto, as well as the pleadings, records and files in this action.

5 **I. PROCEDURAL HISTORY**

6 Plaintiff JOSUE SOTO originally filed this action in the San Diego Superior Court, under
7 Case No. 37-2007-00083029-CU-OE-CTL, on December 5, 2007. On January 4, 2008, Defendant
8 DIAKON LOGISTICS (DELAWARE), INC. ("Defendant") removed this action to the U.S.
9 District Court for the Southern District of California.

10 On December 21, 2007, two other individuals alleging that they were employees of
11 Defendant filed a separate action entitled *Rashid et al. v. Diakon Logistics, Inc.*, in the San
12 Francisco Superior Court, under Case No. CGC-07-470303. On January 25, 2008, Defendant
13 removed the *Rashid et al. v. Diakon* case to the U.S. District Court for the Northern District of
14 California, where it was assigned Case No. 3:2008cv00621.

15 **II. ALL PARTIES HAVE STIPULATED TO LITIGATE BOTH CASES TOGETHER**
16 **IN THE PRESENT ACTION, AS SET FORTH IN THE FIRST AMENDED**
17 **COMPLAINT**

18 The parties to both cases have met and conferred and have agreed that it is in all the parties'
19 best interests to litigate the two related cases together in this action. On April 17, 2008, a
20 stipulation was entered into between Plaintiff, Josue Soto; Plaintiffs, Ghazi Rashid and Mohamed
21 Abdelfattah; and Defendant, DIAKON LOGISTICS (DELAWARE) INC. by and through their
22 undersigned counsel. This stipulation is attached as **Exhibit "A"** to the Declaration of David A.
23 Huch in Support of Plaintiff's Ex Parte Application to Allow Filing of Plaintiff's First Amended
24 Complaint Without Leave of Court, filed concurrently herewith.

25 Pursuant to paragraph B. of the aforementioned stipulation, all parties have agreed that all
26 claims, rights, actions and causes of action asserted by all Plaintiffs, including Ghazi Rashid and

1 Mohamed Abdelfattah, in the first amended complaint shall relate back to the original filing date in
2 this action of December 5, 2007. Plaintiff has filed the First Amended Complaint in conjunction
3 with the present ex parte application.

4 Accordingly, Plaintiff moves for an order to direct the Clerk of the Court to file Plaintiff's
5 First Amended Complaint without leave of court. Plaintiff also moves for an order confirming that
6 all claims, rights, actions and causes of action asserted by all Plaintiffs, including Ghazi Rashid and
7 Mohamed Abdelfattah, in the first amended complaint shall relate back to the original filing date in
8 this action of December 5, 2007.

9 DATED: April 18, 2008

LAW OFFICES OF DAVID A. HUCH

10 s/ David A. Huch

11 DAVID A. HUCH

12 Attorneys for Plaintiff,

13 JOSUE SOTO

14 Email: dhuch@onebox.com